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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/775,983

02/10/2004

Timothy Meier

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1324

20874

7590

06/07/2006

WALL MARJAMA & BILINSKI  
101 SOUTH SALINA STREET  
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SYRACUSE, NY 13202

EXAMINER

KIM, AHSHIK

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/775,983	<b>Applicant(s)</b> MEIER ET AL.	
	<b>Examiner</b> Ahshik Kim	<b>Art Unit</b> 2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 3/6/06 (Amendment).
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-11 and 48-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-11 and 48-53 is/are allowed.
- 6) ☒ Claim(s) 54-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/05: 03/06</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Amendment***

1. Receipt is acknowledged of the amendment filed on March 16, 2006. In the amendment  
5 claims 1-5 and 12-47 are canceled and claims 48-80 were newly added. Currently, claims 6-11  
and 48-80 remain in the examination.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

10 The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the  
subject matter which the applicant regards as his invention.

3. Claims 56-59, 65-68, and 74-77 are rejected under 35 U.S.C. 112, second paragraph, as  
being indefinite for failing to particularly point out and distinctly claim the subject matter which  
15 applicant regards as the invention.

Re claims 55: it is unclear what is meant by "the given parameter is a symbology  
black/white contrast indicia." If this phrase is referring to a barcode – black and white code,  
Bridgelall already discloses reading of the barcode. If not, it is unclear what is being claimed.  
Interpretation of claim 55 applies to claims 65 and 74.

20 Re claims 57-59, similar to claim 55, it is unclear what Applicant meant by "symbology  
color contrast indicia", "a motion blur indicia" or "a bar growth indicia." Interpretation of claims  
57-59 applies to claims 66-68 and 75-77.

### ***Claim Rejections - 35 USC § 103***

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

5 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the

10 claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

15 6. Claims 54, 55, 60-64, 69-73, 78, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bridgelall et al. (US 5,569,901, hereinafter "Bridgelall").

Re claims 54, 55, 60, 62-64, 69, 71, 73, 78, and 80, Bridgelall discloses a digital image reading system, an image reading component 600 which includes a digitizer 622; and image  
20 decoding component 624 (see figure 3; col. 8, lines 35+; col. 8, lines 60+). The scanner utilizes a plurality of scanner operating parameters (col. 3, lines 45-54; col. 4, lines 34+). It is further disclosed that the microprocessor 10 processes a plurality of scanning parameters such as scanning speed, beam focus, symbol density, range and working distance (col. 6, lines 32-60).

Examiner is aware that Bridgelall discloses a single processor – the microprocessor 10  
25 which optimize the operating parameters. The distinction between the pending claims and the Bridgelall patent is whether use of a single digitizer or a plurality of digitizers wherein a digitizer

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is associated with a given parameter. It is the Examiner's view that use of a single digitizer or a plurality of digitizers are an obvious design variation element, in that each parameter is adjusted to achieve optimal reading conditions.

Re claims 61, 70, and 79, parameters such as range, location, orientation, and working  
5 distance have some overlapping components (range and distance).

Re claim 72, the light detector 620 is capable of handling two-dimensional barcode (col.  
1, line 61 – col. 2, line 3).

It is the Examiner's view that use of a single digitizer or a plurality of digitizers are an  
obvious design variation element, in that each parameter is adjusted to achieve optimal reading  
10 conditions.

#### ***Allowable Subject Matter***

7. Claims 6-11 and 48-53 are allowed.

8. The following is a statement of reasons for the indication of allowable subject matter: the  
15 following is a method/algorithm for use by a digital image processor, and the image processor  
utilizing such algorithm. The reader operates at a given frame rate, gain parameter and exposure  
time parameter; evaluate an image; determine whether the system operates at the fastest frame  
rate; if not, calculate a new exposure time parameter for desired illumination; and calculate a  
maximum frame rate for the exposure time; calculate a new exposure setting; and outputs the  
20 image if the image is acceptable and repeats above-mentioned steps if not. Such algorithm is not  
disclosed or suggested by the cited references.

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*Response to Arguments*

9. Amended claims and remarks filed on March 16, 2006 have been carefully reviewed and considered. Upon the review, claims 6-11 and 48-53 were disposed to be allowable. Claims 54-80 were carefully considered. It is the Examiner's view that newly added claims 54-80 were directed on a different subject matter than allowed claims. Allowed claims were on algorithms used in digital image reading system or a digital image reading system programmed to perform steps according to the algorithms. Claims 54-80 were directed on a digital image reading system comprising a plurality of parameters and respective digitizers, which warranted new search and considerations.

10 Applicant's arguments with respect to newly added claims have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

I. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Poland (US 4,825,058); Tamburrini (US 5,962,838) disclose barcode readers with a plurality of operating parameters. Applicant is respectfully suggested to carefully review these references.

II. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Ahshik Kim* whose telephone number is (571)272-2393. The examiner can normally be reached between the hours of 6:00AM to 3:00PM Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (571)272-2398. The fax number directly to the Examiner is (571)273-2393. The fax phone number for this Group is (703)872-9306.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [ahshik.kim@uspto.gov].

*All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.*

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished application is available for Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions or access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

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Ahshik Kim  
Primary Examiner  
Art Unit 2876  
May 26, 2006